

THE DAILY COMMONWEALTH.

VOL. 1.

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A. G. HODGES, T. J. TODD & J. W. FINNELL
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PROSPECTUS
FOR PUBLISHING AT THE CAPITAL OF THE STATE, THE
PROCEEDINGS AND DEBATES
OF THE
CONVENTION OF KENTUCKY,

To be held at Frankfort, on the first Monday in October next, to adopt a New Constitution for the State.

THE following resolution has been adopted by the Legislature, and approved by the Governor, viz:

"Resolved by the General Assembly of the Commonwealth of Kentucky, That John W. Finnell and William Turner, and they are hereby authorized to procure

the services of the best stenographers in the country, to report the Proceedings and Debates of the Convention, called to meet, or re-adopt the Constitution of Kentucky. Provided, That the contract, when made with the Reporters, shall be submitted to, and approved by, the Governor of the Commonwealth."

Under the sanction of this authority, the services of the most competent stenographers to be procured in the Union, will be secured, to report in full the PROCEEDINGS AND DEBATES of the Convention to meet as above.

The Reports will be more full and accurate, it is believed, than those of any similar body, the proceedings of which now constitute part of the history of the constitutional science of our great confederacy. For, besides having the official sanction of the Convention, and the supervision of the legislative agents named in the resolution above, they will first be published in a cheap daily edition, and if any inaccuracies should occur in this, they will be discovered and corrected before the matter of the Reports is transferred to the book form in which they are now proposed to be published.

The progress of Constitutional reform in the United States is not one of the least interesting features of our national prosperity, as it shows the growth of the public mind in the appreciation of the science of government, and has kept up with the increase of population, of power, and of glory.

Our own State Constitution, now entering on the advance of half a century, in the vigor of its maturity, was amongst the best of its day, as the hardy and enlightened men who formed it were in advance of their peers of other States in practical knowledge of republicanism. But it has now grown old, and the people have, by an overwhelming majority, resolved that it shall be subjected to the ordeal of a thorough revision. That this duty will be well and faithfully performed, we have the surest assurance in the strong minds, sturdy wills and general intelligence of our people, which will cause them to select delegates possessing the highest order of talents, and the best acquirements, for the important duty assigned them.

The distinguished character of Kentucky Statesmen at home and abroad, for eloquence, patriotism and judgment, the Debate in the Convention are expected to evoke the purest principles in the science of government, and to be characterised by a dignity of manner and elegance of style which will command the literary taste, and general interest of all classes of our fellow citizens. But the greatest value which will attach to this proposed authentic history of the Convention, and that which will most command it to the public patronage, will be its capacity to show to the people and to posterity, the process and reasons which led to the adoption of the organic law of the State, and to declare to them, in clear and unmistakable language, the principles upon which each provision stands—the motives which governed the builders of the arch of their civil and religious liberties; in fact, the mode in which every stone of the political edifice was laid.

In 1787, Mr. MADISON foresaw, with the keen of a prophet, that after generations would seek with the natural avidity of curious and inquiring minds, for the records, objects and opinions of the enlightened body which formed the Constitution of the United States, to enable them to see by what process of reasoning the new system of government adopted by them, received its peculiar structure and organization. Congress paid for his comparative meagre, but accurate and interesting reports, in manuscript, thirty thousand dollars, and the people in every State and in almost every town and county in the Union, sought to secure copies at a high price. It is true that Convention was forming a CHARTER OF LIBERTY for a NATION, and when the work of their hands had withstood the scrutiny of mind, and defied the vicissitudes of time for nearly three-quarters of a century, the interest attached to their proceedings, is greater than can be claimed for any other production of the genius or intellect of man.

It is here proposed to do for Kentucky the work which Mr. Madison performed for a Nation, and the prediction is ventured, that fifty years will see the history of the Convention in Kentucky, to possess scarcely less interest than that of the transcript fathers of 1787.

By securing a copy of these debates, every man will have the arguments and reasons before him, to guide him to an intelligent decision when the new Constitution shall be submitted to his approval; and thus, whether good or bad, he can act upon it as a discriminating judgment will dictate. Hence, we rely with confidence on the intelligence and liberality of our fellow-citizens to extend to the proposed work, a patronage commensurate with its importance, and the intrinsic value.

To Millers and Mill Owners.

T. I. ROBERTS, Millwright and Engineer, will at

T. I. ROBERTS, Frankfort, Ky.

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DODON & GRAHAM, Frankfort.
ADDISON MARSHALL, Steamer Sea Gull.
Capt. W. George, Woodford county.

June 26, 1849-872-3m.

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June 18, 1849-869-1f

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by the mere consideration of the cost of assembling the legislature every year. Nor can I consent that these judges shall be elected by ballot, and nobody else. I am for the ballot, and I would apply the principle to the election of every officer in the government. I would make no distinction—and permit me to say that the remark of my distinguished friend, Mr. C. A. T. on that subject—He thought that it was necessary to restrict the ballot for the purpose of preserving a peculiar institution in Kentucky. I have never heard such an argument before.

Mr. C. A. WICKLIFFE. The gentleman will pardon me, but he neither could have heard me nor read my printed speech. The remark I made was, that I was attached, from long habit, to the *ring out* system of voting; and that the reasons which perhaps had induced other states to adopt and practise the system of voting by ballot, did not, and would not exist here, as they were supposed to exist there, so long as we cherished and maintained our present domestic institutions—Not that the *ring out* system was necessary to maintain these institutions, but that the maintenance of them would obviate the necessity for the existence of those causes which have driven other states to the adoption of the ballot system.

Mr. R. N. WICKLIFFE. I am very happy to hear the explanation of the gentleman, for I certainly would not like to have such an idea go forth with the sanction of the distinguished gentleman from Nelson. We have had enough of appeals to the non-slaveholder against the slaveholder in Kentucky. There was not a county in the state in which such an appeal had been successful, and what was it that had composed this body as it is, with the sentiments they entertain on this subject? What was it but a sense of justice in the public mind? I go with the gentleman from Henderson, (Mr. Dixon) and I expect to vote in favor of his resolution, deciding that you have no right to take the property of the citizen without paying him for it. You have no more right to take it without due compensation than the non-stockholders in a bank have a right to seize on the bank's money—and there is not one man in five hundred who is a stockholder in a bank.

Gentlemen have frequently made allusions to the ancient democracies, and drawn largely from those sources for illustration. But there is a principle, it should be recollected, the discovery of modern times, of which those democracies knew nothing. That is the representative principle. The people here do not meet together now, as they did in olden times, even when it is possible for them to do so. There is not a village in the state, in which the people might not meet and adopt their municipal regulations—Yet do they not elect trustees to whom they confide their business? The principle has become so interwoven with the hearts and customs of the people, that they exercise it even in those cases where they could easily meet *en masse*, and transact their business. But along with that principle has come another, and without it the system would all end in despotism. That is the principle of periodical responsibility on the part of any man delegated to office, to those who delegated him. It is responsibility on the part of the public agent, not only to the people themselves, but to those who come directly to the people, and who alone are competent to bring him to the public scrutiny. That is the principle, and hence I shall vote for the amendment of the gentleman from Nelson. Then we shall have responsibilities directly to the people at the end of eight years, as provided by the committee, but another, and a better, and more efficient responsibility to the people's representatives—I do not contend that the legislature is the people. But they are the representatives of the people, elected every year, and coming fresh from the people, and they are the proper depositaries of the duty of holding to accountability all other officers.

I had not designed to occupy much of the time of the committee, and I rose merely for the purpose of indicating my views in regard to an independent judiciary. I have done so frankly, though perhaps the people of my county may not entertain the same views that I do. They may be, for I ought to know, governed by the views of a distinguished gentleman in Clarke, who is writing and circulating, through the public press, a series of essays in which he takes the very grounds in arguing against an elective judiciary—the same melancholy strains that gentlemen do here, against the principle of providing a responsibility on the part of the judiciary to the legislative department of government.

I shall add no more, though perhaps I may avail myself of a parliamentary privilege, if I think proper, and write out my views a little fuller on this subject than I have here delivered them.

Mr. GREY. I desire to occupy for a few moments the attention of the committee, while I give the reasons that will induce me to dissent from the proposition of my respected friend from Nelson. I have been taught, from my earliest infancy, to receive whatever should come from his lips as being dictated by the pure principles of patriotism, and as having been sustained by great and superior wisdom and experience. And I am very sorry that on this occasion, I cannot give my assent to the proposition which the gentleman has suggested. What is that proposition? Why, if I understand it, it is to strike out the third section of the report of the committee on the court of appeals, the words, "that shall not be sufficient grounds of impeachment" with a view if I understand correctly, that we may so alter and so frame this constitution which we are called upon to make, that there shall be no distinction in right of the legislature to remove the judges from office, whether by address or by impeachment; and that for any matter for which a judge shall be subject to impeachment and trial by a court that is to consist of the Senate upon oath, he may also be removed by a bare majority of the legislature. Not only judicial but executive officers, as I understand it, from the highest to the lowest, are to be subject to this same tribunal. That is the question that we are now called upon to consider. And I ask you, in considering this question, if it is not necessary to understand why we have three great departments in this government? Why is it that the wisdom of our fathers, who framed our general government, and the wisdom of those who framed all our state governments, have thought proper to divide and distribute the powers of government into three distinct departments, and to give to each department a separate body of magistracy? If I understand the great principle that has made this experiment of a free government successful, it is that there has entered into it the provision which never before entered into any government: that these three departments should be separate and independent. And this too notwithstanding the position of the gentleman from Fayette, (Mr. R. N. Wickliffe,) that they cannot be independent of each other. It has been my learning that these departments of government operate as checks and balances on each other, and thus the one would prevent the other from exercising any power which did not properly belong to it. If these are true principles, if they lie at the foundation of our government, and are worth maintaining and preserving in the constitution that we are called upon to frame, I ask you if the proposition of the gentleman from Nelson is not calculated to subvert and destroy them. It seems to me they would crumble into dust. Now, what are the arguments that gentlemen offer in support of that proposition, and what reasons do they give here, why this principle should be changed—a principle which has been sanctioned by the authority of every state in the union, and by the constitution of the United States itself. I ask, sir, what reasons do gentlemen give for going thus against the experience and the history of the country from its foundation to the present time. Why, the gentleman says this is a republican government, and here the great republican principle is that the majority must rule, and that they can do no wrong. That is the position, the only principle that my honorable friend has urged as a reason for making this radical change, as I conceive it to be in the principles of our constitution. I will go as far as any man, in saying that a majority of the people have the right to rule, and to frame and fashion their government as they think will

best secure their rights, but how and when are they to do it? Here is the place, and we are delegated to do it. Here the majority of the people are heard, and they have a right to frame, and I trust we shall frame such a government as is now of great importance, and I am desirous therefore, that my views in relation to it, however humble they may be, shall be known to my immediate constituents.

Since then that objection prevail if the people, acting here in their sovereign capacity through their representatives, think that the great ends of government, the security of the life, liberty, and property of the citizens of the state, will be better attained by having the provision in the constitution, that one department of the government shall not be interfered with or removed by another department—although it may be as a gentleman has said the representatives of the people, unless they can get two thirds of their number to concur therein. We have the same right to engrave that principle on the constitution, and it will be as republican, as the thought proper to place it in the power of a bare majority of the legislature to override and control the other departments of the government.

It seems to me that all the reasons that gentlemen have offered for this change, amount to nothing more than that. The honorable gentleman from Fayette has gone into a history of the judiciary of England, to state and show us that the judiciary there is independent. Why, from the gentleman's speech, I presume that he thinks it is far better and more independent than any judiciary we have here, or that we will have, after we have organized it on the plan proposed in the report now under consideration. He tells us that the judges there are subject and responsible to a majority of the parliament, and not to two thirds. He told us at the same time, that these judges derive their power and authority by appointment from the king. Is there no difference here? Is there no difference in the proposition that is now before the committee? Do we propose that any king shall bestow this appointment upon the judges, or that any other one individual shall do it? No, sir, the proposition here is that the people in their sovereign capacity shall elect these judges. And I ask if it would not be the height of folly and absurdity when they give them the right to elect their judges, to say we will give to a bare majority, an accidental one perhaps, of the legislature, who are elected by the same power, not for the purpose of making judges, but to attend to the legislation of the country, the right to turn out all the judges in the commonwealth, for some difference in opinion that they may conceive to exist between them. It would seem to me, that instead of this responsibility that the gentleman speaks of, he is building up a power to tear down and destroy what the people themselves have set up. If they are qualified to elect men to discharge the duties of the office of judge, ought they to be a power above the people, a bare majority of another department of this government to undo, to tear down and demolish what the people have built up. It seems to me a strange fallacy that has got into the heads of some of my friends. But the gentleman says there will not be a sufficient responsibility to the people, or to any other appointing power. Now, would it not be quite as proper that the people should appoint some power to regulate the legislature? They are both selected as the agents of the people. And would it not be quite as plausible to say that there should be some tribunal to overrule and investigate the acts of the legislature before they should operate on the people. This very provision requires that all these judges shall go out at the end of eight years; and if you adopt the report, one of them is to go out at the expiration of every two years. Is not that a responsibility directly to the people, and one that will affect them as soon as the responsibility of the representatives in the legislature will be thrown back upon them? I presume my friend from Fayette is the only gentleman here who is in favor of annual sessions of the legislature. If there was anything that did most to bring about this convention in my section of the country, it was the fact that the people complained of the legislation of the country—that there was too much of it—that the legislature met here annually, and were engaged in passing all manner of laws which before they could be fairly understood, or their effects tested, were half of them modified, changed, or repealed, until the gentleman here, with all his legal knowledge, would find it difficult to transact the law on some particular subject. It seems to me that this was one of the reasons why this convention was called together. And it will certainly be engrained on the constitution that the legislature shall not meet often than once in two years.

And then the responsibility would exist in regard to one of these judges as there would in regard to the legislature itself. They would be directly responsible to the people, (both the judge and the legislature,) and within the same period of time. But what are the bad effects that would result from the proposition of the gentleman? Why, whenever a legislature should come here, instead of going about its business the people entrusted to them, the legislation of the country, should have agitation all over the state in regard to the removal of the judges. Here would be a judge in one section of the state, who was not acting in a manner suited to the notions of some particular representative, he having perhaps decided some case under a particular law against him, or his friend, and on that principle you might combine members from all parts of the state, and consume more of the time of the legislature in trying these judges than might be required in passing all the laws that were necessary and proper. And if there should be any law passed involving any great constitutional question bearing upon the people at large—any thing which would excite and divide the people into parties, by address or by impeachment; and that for any matter for which a judge shall be subject to impeachment and trial by a court that is to consist of the Senate upon oath, he may also be removed by a bare majority of the legislature. Not only judicial but executive officers, as I understand it, from the highest to the lowest, are to be subject to this same tribunal. That is the question that we are now called upon to consider. And I ask you, in considering this question, if it is not necessary to understand why we have three great departments in this government? Why is it that the wisdom of our fathers, who framed our general government, and the wisdom of those who framed all our state governments, have thought proper to divide and distribute the powers of government into three distinct departments, and to give to each department a separate body of magistracy? If I understand the great principle that has made this experiment of a free government successful, it is that there has entered into it the provision which never before entered into any government: that these three departments should be separate and independent. And this too notwithstanding the position of the gentleman from Fayette, (Mr. R. N. Wickliffe,) that they cannot be independent of each other. It has been my learning that these departments of government operate as checks and balances on each other, and thus the one would prevent the other from exercising any power which did not properly belong to it. If these are true principles, if they lie at the foundation of our government, and are worth maintaining and preserving in the constitution that we are called upon to frame, I ask you if the proposition of the gentleman from Nelson is not calculated to subvert and destroy them. It seems to me they would crumble into dust. Now, what are the arguments that gentlemen offer in support of that proposition, and what reasons do they give here, why this principle should be changed—a principle which has been sanctioned by the authority of every state in the union, and by the constitution of the United States itself. I ask, sir, what reasons do gentlemen give for going thus against the experience and the history of the country from its foundation to the present time. Why, the gentleman says this is a republican government, and here the great republican principle is that the majority must rule, and that they can do no wrong. That is the position, the only principle that my honorable friend has urged as a reason for making this radical change, as I conceive it to be in the principles of our constitution. I will go as far as any man, in saying that a majority of the people have the right to rule, and to frame and fashion their government as they think will

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And then the responsibility would exist in regard to one of these judges as there would in regard to the legislature itself. They would be directly responsible to the people, (both the judge and the legislature,) and within the same period of time. But what are the bad effects that would result from the proposition of the gentleman? Why, whenever a legislature should come here, instead of going about its business the people entrusted to them, the legislation of the country, should have agitation all over the state in regard to the removal of the judges. Here would be a judge in one section of the state, who was not acting in a manner suited to the notions of some particular representative, he having perhaps decided some case under a particular law against him, or his friend, and on that principle you might combine members from all parts of the state, and consume more of the time of the legislature in trying these judges than might be required in passing all the laws that were necessary and proper. And if there should be any law passed involving any great constitutional question bearing upon the people at large—any thing which would excite and divide the people into parties, by address or by impeachment; and that for any matter for which a judge shall be subject to impeachment and trial by a court that is to consist of the Senate upon oath, he may also be removed by a bare majority of the legislature. Not only judicial but executive officers, as I understand it, from the highest to the lowest, are to be subject to this same tribunal. That is the question that we are now called upon to consider. And I ask you, in considering this question, if it is not necessary to understand why we have three great departments in this government? Why is it that the wisdom of our fathers, who framed our general government, and the wisdom of those who framed all our state governments, have thought proper to divide and distribute the powers of government into three distinct departments, and to give to each department a separate body of magistracy? If I understand the great principle that has made this experiment of a free government successful, it is that there has entered into it the provision which never before entered into any government: that these three departments should be separate and independent. And this too notwithstanding the position of the gentleman from Fayette, (Mr. R. N. Wickliffe,) that they cannot be independent of each other. It has been my learning that these departments of government operate as checks and balances on each other, and thus the one would prevent the other from exercising any power which did not properly belong to it. If these are true principles, if they lie at the foundation of our government, and are worth maintaining and preserving in the constitution that we are called upon to frame, I ask you if the proposition of the gentleman from Nelson is not calculated to subvert and destroy them. It seems to me they would crumble into dust. Now, what are the arguments that gentlemen offer in support of that proposition, and what reasons do they give here, why this principle should be changed—a principle which has been sanctioned by the authority of every state in the union, and by the constitution of the United States itself. I ask, sir, what reasons do gentlemen give for going thus against the experience and the history of the country from its foundation to the present time. Why, the gentleman says this is a republican government, and here the great republican principle is that the majority must rule, and that they can do no wrong. That is the position, the only principle that my honorable friend has urged as a reason for making this radical change, as I conceive it to be in the principles of our constitution. I will go as far as any man, in saying that a majority of the people have the right to rule, and to frame and fashion their government as they think will

best secure their rights, but how and when are they to do it? Here is the place, and we are delegated to do it. Here the majority of the people are heard, and they have a right to frame, and I trust we shall frame such a government as is now of great importance, and I am desirous therefore, that my views in relation to it, however humble they may be, shall be known to my immediate constituents.

Mr. KAVANAUGH. It is with great difficulty that I have brought my mind to the point of addressing this committee, and giving the reasons that will influence my vote, both to the committee and to the country. But sir, the attitude which I occupy here, and the relation which I sustain to the constituency which sent me to this body, make it necessary that I define the reasons that shall induce me to give the vote which I shall give upon the question, which is now under consideration.

That there are great and general complaints throughout the state of Kentucky, as to the non-responsibility of the judiciary of the country, cannot be denied. There is scarcely a dissenting voice among all those with whom I have conversed on the subject, that there is no practical responsibility, so far as the judges of the court are concerned, and I myself have ever been in favor of an efficient mode, if it can be devised, of reaching the judiciary of the country, for any malfeasance in office. I took that position before my constituents, and came here with the understanding, that so far at least as the county offices were concerned, my views and those of my constituents were with the report of the committee on that subject. But with regard to other classes of officers in the commonwealth, as their mode of redress in consequence of the malfeasance of the officers to the trust which has been reposed in him. Henceforth, even though a judge may have abused the discretionary power vested in him, even though he may not have come up to the line in which a majority of the people would like the judge to walk, and nevertheless, would not be sufficient ground of removal, either by impeachment or address, they have remained quiet, and why? For the simple fact that they had no other remedy than going before the legislature.

What now would be the case, whereas it is only when a judge is acting improperly?

Why the people of the state are now to consider.

As far as I understand, the people have a right to demand that the judges shall be tried by a simple majority of the legislature, or by a majority of two thirds.

Mr. KAVANAUGH. Sir, the two thirds principle is the identical principle, above which the public mind in Kentucky was awakened to a sense of the iniquitous system that was resting upon us. It was upon this ground that I stood upon this floor, both on my right hand and on my left, gentlemen of acknowledged ability, and of the citizens of the state, will be better attained by having the provision in the constitution, that one department of the government shall not be interfered with or removed by another department—although it may be as a gentleman has said the representatives of the people, unless they can get two thirds of their number to concur therein. We have the same right to engrave that principle on the constitution, and it will be as republican, as the thought proper to place it in the power of a bare majority of the legislature to override and control the other departments of the government.

It seems to me that all the reasons that gentlemen have offered for this change, amount to nothing more than that. The honorable gentleman from Fayette has been presented to this house, gentlemen upon this floor, both on my right hand and on my left, gentlemen of acknowledged ability, and of the citizens of the state, will be better attained by having the provision in the constitution, that one department of the government shall not be interfered with or removed by another department—although it may be as a gentleman has said the representatives of the people, unless they can get two thirds of their number to concur therein. We have the same right to engrave that principle on the constitution, and it will be as republican, as the thought proper to place it in the power of a bare majority of the legislature to override and control the other departments of the government.

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